




Office of the City Manager
5200 Emerald Parkway • Dublin, OH 43017-1090
Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager 
Date: August 6, 2015
Initiated By: Angel L. Mumma, Director of Finance
Re: **Ordinance No. 53-15 – Approving a Compensation Agreement with the Franklin County Board of County Commissioners for the Bridge Park Residential Incentive District**

Summary

In conjunction with Ordinance No. 45-15 which authorizes the establishment of the Bridge Park Incentive District, Ordinance 53-15 proposes the approval of a compensation agreement with the Franklin County Board of County Commissioners for the Bridge Park Incentive District.

As Council is aware, an Incentive District is a type of Tax Increment Financing (TIF) that applies to owner-occupied housing. Like commercial TIFs, improvements to a parcel are considered a public purpose and exempt from taxation. Property owners are required to make service payments in lieu of the incremental increase in taxes (referred to as PILOTS – payments in lieu of taxes or Service Payments). The amount of these payments is equal to the taxes that would have been due had the Incentive District not been in place. Therefore, a property owner pays no more or less in property taxes/service payments as a result of an Incentive District.

Incentive Districts differ from commercial TIFs in that there are some property tax levies which are protected by statute. These include levies approved after January 1, 2006 for MRDD, senior services, ADMH, the library, children's services, and the zoo. Additionally, ORC stipulates if there is not a mutually agreed upon compensation agreement with the Board of County Commissioners, a prescribed compensation amount must be paid to the County in years 11-30 of the Incentive District.

The City proposed the TIF ordinance to Franklin County. The TIF ordinance was rejected by the Franklin County Board of Commissioners on June 16, 2015. Such rejections are not unusual for these ordinances, and the County's resolution contemplated continued negotiations toward a mutually acceptable compensation agreement with the City of Dublin. In July, Franklin County officials proposed a compensation agreement that was deemed financially acceptable by the City and the Developer. (Note: Given that any compensation due to the County will be paid directly from the service payments received within the Incentive District, thus reducing the TIF revenues available to the Developer to fund public improvements, the Developer has a financial interest in ensuring the compensation agreement is not detrimental to the overall financial feasibility of the project). Based on the estimated value of the owner-occupied housing, to which the compensation agreement is based on, the agreement calls for the following compensation (in both mills and dollar amounts):

- Years 1 – 15 – the compensation payments shall be equal to zero percent (0%) of the amount of taxes the County levies would have collected for the improvements but for the exemption granted by the TIF Ordinance.
- Years 16 – 20 – the compensation payments shall be equal to twenty-five percent (25%) of the amount of taxes the County levies would have collected for the improvements but for the exemption granted by the TIF Ordinance.
 - Estimated compensation based on 4.2 mills - \$77,300
- Years 21 – 25 – the compensation payments shall be equal to thirty percent (30%) of the amount of taxes the County levies would have collected for the improvements but for the exemption granted by the TIF Ordinance.
 - Estimated compensation based on 5.0 mills - \$92,100
- Years 26 – 30 – the compensation payments shall be equal to thirty-five percent (35%) of the amount of taxes the County levies would have collected for the improvements but for the exemption granted by the TIF Ordinance.
 - Estimated compensation based on 5.9 mills - \$108,700

When compiling the financial proforma for the Bridge Park Development, the Developer took into account the most conservative scenario – one in which the City and the County did not come to agreement on the terms of a compensation agreement, thus resorting to higher statutory compensation levels.

Recommendation

Staff recommends that Ordinance No. 52-15 be adopted by City Council at the second reading/public hearing on August 24, 2015.

RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 53-15

Passed _____, 20____

AN ORDINANCE APPROVING A COMPENSATION AGREEMENT WITH THE FRANKLIN COUNTY BOARD OF COUNTY COMMISSIONERS FOR THE BRIDGE PARK RESIDENTIAL INCENTIVE DISTRICT.

WHEREAS, the City has prepared a strategy for comprehensive development within an area of the City known as the Bridge Street District (which area is referred to herein as the "*District*") and has endeavored to work collaboratively with the Franklin County Board of County Commissioners (the "*Commissioners*") to plan for and facilitate the development of the District; and

WHEREAS, the City is taking steps pursuant to Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 to create the Bridge Park Incentive District (the "*Incentive District*") located within the District and will declare improvements within the Incentive District to be a public purpose (the "*Improvements*") thereby exempting those Improvements from real property taxation; and

WHEREAS, the City desires to compensate the County of Franklin, Ohio (the "*County*") for forgone tax revenues in connection with the Incentive District for levies collected by the County and providing for County operations and services; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide for the execution of a compensation agreement with the Commissioners which will facilitate the creation of the Incentive District, payment of compensation to the Commissioners and further development in the Incentive District;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring, that:

Section 1. Authorization of Compensation Agreement. The Franklin County Compensation Agreement by and between the City and the Commissioners (the "*Compensation Agreement*") and in the form presently on file with the Clerk of Council is hereby approved and authorized with such changes and completions therein not inconsistent with this Ordinance and not substantially adverse to the City and which shall be approved by the City Manager. The City Manager, for and in the name of the City, is hereby authorized to execute the Compensation Agreement, provided further that the approval of changes or completions to such agreement by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof.

Section 2. Further Authorizations. This City Council further hereby authorizes and directs the City Manager, the Director of Finance, the Director of Law, the Director of Development, the Clerk of Council or other appropriate officers of the City to prepare and sign all documents and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 3. Open Meetings. This City Council finds and determines that all formal actions of this City Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Council or any of its committees, and that all deliberations of this City Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Ohio Revised Code Section 121.22.

Section 4. Effective Date. This Ordinance shall be in full force and effect on the earliest date permitted by law.

Signed:

Mayor – Presiding Officer

Attest:

Clerk of Council

Passed: _____, 2015

Effective: _____, 2015

FRANKLIN COUNTY COMPENSATION AGREEMENT

This FRANKLIN COUNTY COMPENSATION AGREEMENT (this “*Compensation Agreement*”) by and between the CITY OF DUBLIN, OHIO, a municipal corporation with its offices at 5200 Emerald Parkway, Dublin, Ohio 43017 (the “*City*”), and the FRANKLIN COUNTY BOARD OF COUNTY COMMISSIONERS, a county government with its principal offices at 373 South High Street, Columbus, Ohio 43215 (the “*Commissioners*”), specifies the manner and procedure to be used to compensate the Commissioners for certain foregone tax revenues resulting from Dublin City Ordinance No. 45-15 (the “*TIF Ordinance*”), granting a one-hundred percent (100%) tax exemption for a period not to exceed thirty (30) years pursuant to Ohio Revised Code Section 5709.40(C).

WITNESSETH:

WHEREAS, the City and the Commissioners desire to encourage the development of the real property described and depicted on Exhibit A attached to this Agreement (the “*Property*”), as may be owned now and in the future by one or more owners (the “*Owners*”), to further the economic development goals of the City; and

WHEREAS, the City is taking steps pursuant to Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 (collectively, the “*TIF Statutes*”) to create an incentive district comprised of the Property (the “*Incentive District*”) and will declare improvements to the Property within the Incentive District to be a public purpose (the “*Improvements*”) thereby exempting those Improvements from real property taxation, and will provide for annual service payments in lieu of taxes to be made by the Owners with respect to the Property (the “*Service Payments*”), and will establish a municipal public improvement tax increment equivalent fund (the “*TIF Fund*”) to pay a portion of the cost of related public infrastructure improvements (the “*Public Improvements*”); and

WHEREAS, pursuant to Ohio Revised Code Section 5709.40(F), the exemption of the Improvements from real property taxation does not include certain additional real property tax levies and certain renewal or replacement real property tax levies that exceed the effective tax rate of the levy renewed or replaced; and

WHEREAS, the exemption of the Improvements from real property taxes does include current real property tax levies; and

WHEREAS, 1.47 mills (effective rates of 1.47 mills for residential/agricultural property and 1.47 mills for commercial/industrial property) is being levied currently for providing or maintaining general County operations (the “*Inside Millage Levy*”); and

WHEREAS, 1.3 mills (effective rates of 1.296250 mills for residential/agricultural property and 1.3 mills for commercial/industrial property) is being levied currently for providing or maintaining senior citizens services or facilities (the “*Senior Levy*”); and

WHEREAS, 7.0 mills, consisting of two 3.5 mill levies (each with effective rates of 3.489906 mills for residential/agricultural property and 3.5 mills for commercial industrial

property) is being levied currently for community mental retardation and development disabilities programs and services (collectively, the “*BDD Levy*”); and

WHEREAS, 2.2 mills (effective rates of 2.193655 mills for residential/agricultural property and 2.2 mills for commercial industrial property) is being levied currently for alcohol, drug addiction and mental health services or facilities (the “*ADAMH Levy*”); and

WHEREAS, 5.0 mills, consisting of a 1.9 mill levy and 3.1 mill levy (effective rates of 1.752902 mills and 3.091059 mills, respectively, for residential/agricultural property and 1.9 mills and 3.1 mills, respectively, for commercial/industrial property) is being levied currently for the support of children’s services and the placement and care of children (collectively, the “*Children’s Levy*”, and together with the Inside Millage Levy, the Senior Levy, the BDD Levy and the ADAMH Levy, the “*County Levies*”); and

WHEREAS, notice of the City’s intention to pass the TIF Ordinance and declare the Improvements exempt from real property taxes in excess of 75 percent for more than ten years has been delivered to the Commissioners in accordance with Ohio Revised Code Section 5709.40(E)(1); and

WHEREAS, by Resolution No. 0464-15 adopted on June 16, 2015, and as certified by the Commissioners, the Commissioners formally objected to the exemptions from real property taxes of the Improvements as described in the TIF Ordinance, in accordance with Ohio Revised Code Section 5709.40(E)(2); and

WHEREAS, the Commissioners remain in objection to the real property tax exemptions granted pursuant to the TIF Ordinance unless and until a mutually acceptable compensation agreement with the City is negotiated to compensate for tax revenues foregone pursuant to the TIF Ordinance for the County Levies; and

WHEREAS, the City and the Commissioners have negotiated this Compensation Agreement to compensate the Commissioners for tax revenues foregone for the County Levies pursuant to real property tax exemptions granted by the TIF Ordinance;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, covenants and agreements hereinafter set forth, the parties agree as follows:

Section 1. Commissioners Compensation Rates. For each year for which the Owners receive a real property tax exemption and make corresponding Service Payments which are deposited into the TIF Fund, the City shall make payments (the “*Compensation Payments*”), solely from the TIF Fund, to the Commissioners as follows:

(a) In respect of the first through the fifteenth tax year during the exemption period set forth in the TIF Ordinance, the Compensation Payments shall be equal to zero percent (0%) of the amount of taxes the County Levies would have collected for the Improvements but for the exemption granted by the TIF Ordinance.

(b) In respect of the sixteenth through the twentieth tax year during the exemption period set forth in the TIF Ordinance, the Compensation Payments shall be equal to twenty-five

percent (25%) of the amount of taxes the County Levies would have collected for the Improvements but for the exemption granted by the TIF Ordinance.

(c) In respect of the twenty-first through the twenty-fifth tax year during the exemption period set forth in the TIF Ordinance, the Compensation Payments shall be equal to thirty percent (30%) of the amount of taxes the County Levies would have collected for the Improvements but for the exemption granted by the TIF Ordinance.

(d) In respect of the twenty-sixth through the thirtieth tax year during the exemption period set forth in the TIF Ordinance, the Compensation Payments shall be equal to thirty-five percent (35%) of the amount of taxes the County Levies would have collected for the Improvements but for the exemption granted by the TIF Ordinance.

Section 2. Timing of the Payments. Commencing in the calendar year next succeeding the sixteenth tax year of the exemption period set forth in the TIF Ordinance and continuing in each calendar year thereafter for so long as the City receives Service Payments pursuant to the TIF Ordinance, the City shall pay to the Commissioners, on or prior to March 31 of each such calendar year, the Compensation Payment accruing in the immediately preceding year. Each Compensation Payment will include an explanation of the calculation used to determine the amount of the Compensation Payment, including the true value of the Improvements as determined by the Franklin County Auditor on the applicable tax lien date and the applicable property tax millage rate and any other adjustments then in effect. The City and the Commissioners shall cooperate in calculating the Compensation Payments to ensure accuracy, fairness and that the spirit of this Compensation Agreement is maintained.

Section 3. Amendment of Compensation Payments. The intent of this Compensation Agreement is to lessen the revenues foregone for the County Levies pursuant to the real property tax exemption granted by the TIF Ordinance. Should the TIF Statutes be amended in a manner that would cause (a) the County Levies to be excluded, in whole or in part, from the real property tax exemption granted pursuant to the TIF Ordinance, or (b) those tax levies excluded pursuant to Ohio Revised Code Section 5709.40(F) from the real property tax exemption granted pursuant to the TIF Ordinance to be included, in whole or in part, in the real property tax exemption granted pursuant to the TIF Ordinance, the City and the Commissioners agree that they shall negotiate an amendment to this Compensation Agreement to adjust the Compensation Payments.

Section 4. Commissioners Acknowledgment and Consent. In consideration of the Compensation Payments, the Commissioners hereby:

(a) Acknowledge that notice by the City was proper and timely per requirements set forth in Ohio Revised Code Section 5709.40(E) with respect to the TIF exemptions;

(b) Relinquish any and all objection to the real property tax exemptions to be granted under the TIF Ordinance for the Property, including such objection previously stated in Commissioners Resolution No. 0464-15; and

(c) Waive any defects or irregularities relating to the exemption from taxation of the Property.

Section 5. Application of Ohio Revised Code Section 5709.40(E). The Commissioners acknowledge and agree that this Compensation Agreement provides the only compensation to be received by the Commissioners in connection with real property tax exemptions granted pursuant to the TIF Ordinance and the compensation provided for in this Compensation Agreement is in lieu of any other compensation as may be contemplated under Ohio Revised Code Section 5709.40(E)(2).

Section 6. Miscellaneous.

(a) **Assignment.** This Agreement may not be assigned without the prior written consent of all non-assigning parties.

(b) **Binding Effect.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

(c) **Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(d) **Day for Performance.** Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

(e) **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties on the subject matter hereof and supersedes all prior negotiations, agreements and understandings, both written and oral, between the parties with respect to such subject matter. This Agreement may not be amended, waived or discharged except in an instrument in writing executed by the parties.

(f) **Events of Default and Remedies.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, such defaulting party shall, upon written notice from any non-defaulting party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting party shall upon written notice from any non-defaulting party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the defaulting party.

(g) **Executed Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(h) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City or the Commissioners other than in his or her official capacity, and neither the members of the legislative body of the City or the Commissioners nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City and the Commissioners contained in this Agreement.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Commissioners, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

(j) Legal Authority. The parties respectively represent and covenant that each is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. The parties further respectively represent and covenant that this Agreement has, by proper action, been duly authorized, executed and delivered by the parties and all steps necessary to be taken by the parties have been taken to constitute this Agreement, and the covenants and agreements of the parties contemplated herein, as a valid and binding obligation of the parties, enforceable in accordance with its terms.

(k) Limit on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall City or the Commissioners be liable to each other for punitive, special, consequential, or indirect damages of any type and regardless of whether such damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law.

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(l) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

City: City of Dublin, Ohio
% City Manager
5200 Emerald Parkway
Dublin, Ohio 43017

With a copy to: Frost Brown Todd LLC
% Dublin Director of Law
10 West Broad Street – Suite 2300
Columbus, Ohio 43215

County: Franklin County Board of Commissioners
% Board President
373 South High Street, 26th Floor
Columbus, Ohio 43215

With a copy to: Franklin County Prosecutor
373 South High Street, 14th Floor
Columbus, Ohio 43215

The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices; certificates, requests or other communications shall be sent.

(m) No Waiver. No right or remedy herein conferred upon or reserved to any party is intended to be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of any event of default hereunder. The failure of any party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the parties hereto may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

(n) Recitals. The parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(o) Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(p) Survival of Representations and Warranties. All representations and warranties of the parties in this Agreement shall survive the execution and delivery of this Agreement.

(q) Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

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In witness thereof, the parties have caused this Compensation Agreement to be executed as of _____, 2015.

CITY OF DUBLIN, OHIO

**FRANKLIN COUNTY BOARD OF COUNTY
COMMISSIONERS**

By: _____

By: _____

Name: Dana L. McDaniel

Name: _____

Title: City Manager

Title: _____

Approved as to form:

Approved as to form:

Stephen J. Smith, Director of Law
City of Dublin, Ohio

Ron O'Brien
Prosecuting Attorney
Franklin County, Ohio

By: _____
Assistant Prosecuting Attorney

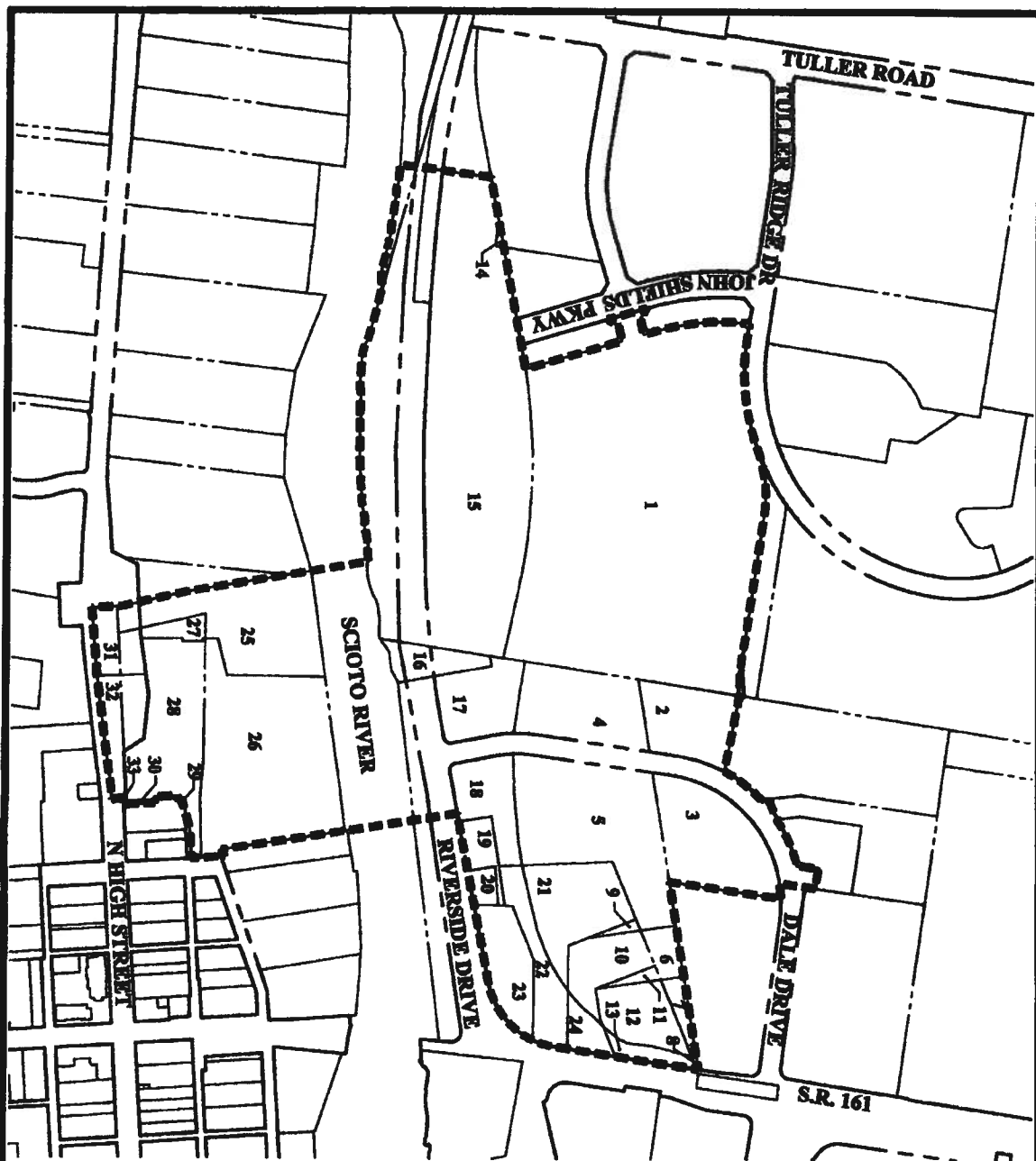
EXHIBIT A

PROPERTY DESCRIPTION

Real property described on the attached map, which is a part of this Exhibit A, and which such property is collectively enclosed in a continuous boundary in the City of Dublin, Franklin County. This Property shall include any purported subdivisions of the enumerated parcels.

This real property may be identified by such Parcel Numbers as may be reassigned by the Franklin County Auditor and street addresses as assigned by the City of Dublin.

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PARCEL ID KEY		
#	PARCEL NUMBER	OWNER
1	273-013071	Baldwin Valley Associates
2	273-013072	Grand Ohio Travel Authority
3	273-013073	Grand Ohio Travel Authority
4	273-013074	Grand Ohio Travel Authority
5	273-013075	Grand Ohio Travel Authority
6	273-013076	Grand Ohio Travel Authority
7	273-013077	Grand Ohio Travel Authority
8	273-013078	Grand Ohio Travel Authority
9	273-013079	Grand Ohio Travel Authority
10	273-013080	Grand Ohio Travel Authority
11	273-013081	Grand Ohio Travel Authority
12	273-013082	Grand Ohio Travel Authority
13	273-013083	Grand Ohio Travel Authority
14	273-013084	Grand Ohio Travel Authority
15	273-013085	Grand Ohio Travel Authority
16	273-013086	Grand Ohio Travel Authority
17	273-013087	Grand Ohio Travel Authority
18	273-013088	Grand Ohio Travel Authority
19	273-013089	Grand Ohio Travel Authority
20	273-013090	Grand Ohio Travel Authority
21	273-013091	Grand Ohio Travel Authority
22	273-013092	Grand Ohio Travel Authority
23	273-013093	Grand Ohio Travel Authority
24	273-013094	Grand Ohio Travel Authority
25	273-013095	Grand Ohio Travel Authority
26	273-013096	Grand Ohio Travel Authority
27	273-013097	Grand Ohio Travel Authority
28	273-013098	Grand Ohio Travel Authority
29	273-013099	Grand Ohio Travel Authority
30	273-013100	Grand Ohio Travel Authority
31	273-013101	Grand Ohio Travel Authority
32	273-013102	Grand Ohio Travel Authority
33	273-013103	Grand Ohio Travel Authority
Total Parcels = 33		



EMHT
Evans, Mechwart, Hambleton & Tilton, Inc.
Engineers • Surveyors • Planners • Scientists
5500 New Albany Road, Columbus, OH 43054
Phone: 614.778.4500 Fax: 614.778.3600
emht.com

CITY OF DUBLIN, FRANKLIN COUNTY, OHIO
EXHIBIT A
THE BRIDGE PARK RESIDENTIAL INCENTIVE DISTRICT

DATE: May 29, 2015

SCALE: As Noted

JOB NO.: 2013-1481